IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1926 of 1998
with
CIVIL APPLICATION No 9149 of 2002
in
SPECIAL CIVIL APPLICATION No 1926 of 1998

with
SPECIAL CIVIL APPLICATION No 232 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT RESEARCH AND MEDICAL INSTITUTE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1926 of 1998
MR SI NANAVATI, LD. SR.COUNSEL FOR
NANAVATI & NANAVATI for Petitioner No. 1-2
GOVERNMENT PLEADER for Respondent No. 1,3
MR MAULIN R RAVAL for Respondent No. 2
RULE SERVED BY DS for Respondent No. 2-3

2. Special Civil Application No.232 of 2000
MR SI NANAVATI, LD. SR.COUNSEL FOR
NANAVATI & NANAVATI for Petitioner
GOVERNMENT PLEADER for Respondent No.1

..... for Respondent No.2-3.

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 03/05/2003

ORAL JUDGEMENT

1. The short facts of the case are that the petitioner is claiming that it is a charitable institution running hospital under the name and style as "Rajasthan Hospital" and Special Civil Application No.1926 of 1998 has been preferred by the petitioner for challenging the action of the Corporation of issuing bill for recovery of general tax as well as education cess for the Accounting Year 1997-98.

2. So far as Special Civil Application No.232 of 2000 is concerned, it is the case of the petitioner that the State Government has granted exemption for education cess, however, in spite of the same, the Corporation has issued bill for recovery of the amount of education cess for the period of 1999-2000, and in the said matter, the petitioner has also challenged the action of the Corporation for recovering general tax for the Accounting Year 1999-2000.

3. The contention of the petitioner in the petition is that, in view of Section 132 of the Bombay Provincial Municipal Corporation Act, 1949, (hereinafter referred to as `the Act'), there is no power to recover general tax on a building and land or on a portion thereof occupied and used for charitable purpose and, therefore, the exemption has been claimed for general tax. It is also the case of the petitioner that for a portion of building the Corporation itself has treated the same use for charitable purpose and the exemption has been granted. However, so far as new structure is concerned, the said aspect is not considered that the new structure is also the part of the hospital and it stands on the same position. The additional contention of the petitioner is that for the State Government similar provisions exists even for the purpose of recovery of education cess where the Corporation is only a collecting machinery, and the State Government has also examined the said aspect and has granted exemption from the education cess. It has been submitted that, once the State Government has granted exemption under the education cess, it would be one of the relevant circumstances to show that the building is used for charitable purpose and the Corporation should grant exemption from general tax to the petitioner. So far as education cess for the period 1999-2000 is concerned, it has been submitted that, once

the State Government having granted exemption, no notice for recovery of such amount was required to be issued for education cess because, as such, the Corporation is only a collecting machinery and the cess is to go to the revenue of the State who has granted exemption and, therefore, there is no question of recovery of the said amount.

4. On behalf of the respondent Corporation, Mr.Raval has mainly contended that, whether a unit or a building is used for public charitable purpose or not is essentially the question of fact. He submitted that in view of the decision of this Court reported in 2000(4) GLR 2858 and other Unreported Judgment of this Court (Coram: Kundan Singh,J.) in Special Civil Application No.5443/98 and its confirmation thereof in Letters Patent Appeals No.238/2000 and 894/2000 such disputed questions of fact cannot be examined by this Court while considering the matter under Article 226 of the Constitution of India. Mr.Raval also submitted that in the decision of Letters Patent Bench when the observation made by the learned Single Judge on the question of use of the building for charitable purpose or otherwise was clarified, and the Division Bench in the said Letters Patent Appeal finally observed that the matter will be decided independently upon the material which may be available. Mr.Raval also submitted that, even otherwise also, there are certain portion of the building which cannot be said to be solely used for public charitable purpose namely provision stores, medical stores, bank, STD booth which are situated within the premises of the hospital but the trust is recovering the income out of the same and, therefore, it cannot be said that the building is solely used for public charitable purpose and it can said to be a commercial purpose. Mr.Raval also submitted that, in the hospital itself, there is a price list of various facilities and hence it is a commercialisation of the hospital activities and, therefore, the petitioner would not be entitled any exemption from the municipal tax. He submitted that, in any event, in a matter of tax recovery, if anybody who has objection regarding the assessment or otherwise, is required to follow the procedure as required under Section 406 of preferring appeal before the Small Causes Court wherein the disputed question of fact can be examined and, therefore, he submitted that the petition would not be maintainable.

5. Having considered the above, it appears that the case of the petitioner is that the Corporation would not be entitled to recover general tax since the building is

used for public charitable purpose and it is also the case of the petitioner that the other portions namely provisions stores, medical stores, bank, STD booth are situated in the hospital with a view to have the convenience and for the facilities of the patient and it is for the incidental use of the hospital, no recovery of general tax can be made by the Corporation from the petitioner. As such, so far as the stand of the Corporation is concerned, even from the affidavit, it is apparent that it has taken a clear stand that the petitioner would not be entitled for exemption.

6. Under these circumstances, I am of the view that when it is a question of exercising the powers for the purpose of exemption, the petitioner can approach to the State Government under Section 451 which is more or less the revisional jurisdiction of the State Government over any resolution or order of the Corporation or of the Municipal authority or otherwise subordinate thereto. Prima facie I am not impressed with the contention raised by Mr.Raval that, since there is a remedy provided under Section 406 of preferring appeal, the State Government cannot exercise the revisional jurisdiction or such dispute would not fall under Section 451. The submission of Mr.Raval to support the said contention is that provisions of Section 451 is a remedy provided for a general and a larger issue and it may not apply to the individual action qua citizen for levying of the tax or for grant of the exemption. Mr.Raval relied upon some of the observations of the Division Bench in case of Gujarat Vidhya Sabha Vs. Municipal Corporation reported in 1995(1) GLR 419 and more particularly at para 8 read with para 16 of the said judgment. In my view, the reliance placed by Mr.Raval upon the said judgment in the present cases is ill-founded inasmuch as in the case of Gujarat Vidhya Sabha (supra), the case before the Division Bench, such question of exemption was raised before the Small Causes Court and was not dealt with by the Small Causes Court and, therefore, at para 16 it has observed that such question regarding provision of Section 132 should have been decided by the Small Causes Court. Such is not in the present situation inasmuch as the petitioners have not approached the Small Causes Court against the decision nor the judgment of the Division Bench in case of Gujarat Vidhya Sabha (supra) can be said as laying down the principle for curtailing the jurisdiction of the State Government under Section 451 of the Act.

7. In addition to the above, it is pertinent to note that the language of Section 132 is not providing for enabling power to the Corporation to impose the tax and

to grant exemption but, in my prima facie view, the legislature has put an embargo on power of the Corporation to tax over a building which are covered in Clauses a, b and c, because the language is that general tax shall be levied in respect of a building and lands, except (emphasis supplied). Therefore, it is not a matter where the Corporation is in full command of the situation or the scheme of the legislature provides that it may tax and may also grant exemption. Therefore, it is a question of putting an embargo on power of the Corporation. It may be that the Corporation may examine whether the condition precedent for prohibiting them for charging the tax on the building is complied with or not but certainly such situation cannot be at par with the case where a tax is to be recovered on the basis of rateable value. If it is a case of charging tax by fixing a rateable value, in normal circumstances, the person concerned from whom the tax is to be recovered may prefer an appeal under Section 406. Moreover, the exercise of the power under Section 132 of the Act and more particularly the operation of the embargo of recovering tax upon the buildings which are falling in the clauses a to c is subject to the power of the State Government under Section 451, which, in my view, is a supervisory jurisdiction of the State over any execution of any resolution or order of the Corporation or its officers. Therefore, prima facie I find that it is a matter where the State Government can exercise the revisional jurisdiction or its power under Section 451 against the decision of the Corporation of charging general tax on the basis that the building is not used for charitable purpose.

8. The additional grounds is that even if it is a disputed question of fact, the revisional authority of the State would be better in a position to examine certain even disputed questions of fact and the record for the purpose of considering that whether the bar operating under Section 132 would be made applicable on the facts and circumstances of the case or not. It may be that, if the State Government rejects the matter, the party may have the remedy of either approaching before this Court or before the Small Causes Court and the said question is kept open. However, in the present case, it cannot be concluded that State Government cannot exercise the powers under Section 451 when it is a matter of considering the power to recover general tax over the buildings which may be falling in Clauses a to c.

9. In view of the aforesaid discussions, since it may also result into examining the disputed questions, I

would have relegated to the petitioner to approach before the Corporation itself but the stand of the Corporation is that the petitioners are not entitled for the exemption and they have a right to recover tax and, therefore, in view of this clear stand of the Corporation, I find that no useful purpose would be served and it is more better if the petitioner approach the State Government by making appropriate application under Section 451, and let the matter be considered by the State Government in exercise of its revisional jurisdiction under Section 451. Even otherwise also, as per the Law of Interpretation of Statute, in the matter pertaining to taxation, this Court before exercising its power under Article 226 of the Constitution would normally relegate the parties to approach before the authority within the provisions of the Act and the power of this Court normally would be exercised after exhausting of such remedies.

10. In view of the aforesaid observations and discussions, Mr.S.I.Nanavati, learned Senior Counsel appearing for the petitioner submits that, the petitioners have no objection in approaching before the State Government by moving appropriate application under Section 451. However, he submitted that the interim protection granted to the petitioner which was of course conditional and petitioner has fulfilled the condition be continued for some reasonable time or till the State Government decides the matter.

11. On behalf of the Corporation, Mr.Raval has submitted that, even if this Court is inclined to relegate the petitioners to approach before the State Government, it may be observed that, in view of this peculiar facts and circumstances, the petitioners are relegated to the State Government and the State Government may also be directed to decide the said issue within stipulated time and he also objects to the continuation of the interim relief until the State Government decides the matter.

12. I find that the first petition is of 1998 and another petition is of 2000 and if the interim relief is continued until the State Government decides the matter within a stipulated time limit, it cannot be said to be a serious prejudice caused to the Corporation more particularly in the facts and circumstances of the present case that the petition is admitted, interim relief was granted on condition and the petitioner has fulfilled such condition and such interim relief operated until final hearing of this matter.

13. In view of the aforesaid observations, discussions and the submissions of the learned advocates appearing for the respective parties, I find that the following directions shall be meet with the ends of justice.

(1) The petitioners shall make appropriate application under Section 451 to the State Government within period of four weeks from today.

(2) If such an application is made to the State Government by the petitioner, the State Government shall consider the matter in accordance with law and shall also give an opportunity of hearing to the Corporation as well as to the petitioner if it is so demanded and shall render the decision on merits within period of three months from the date of receipt of such application.

(3) Until the State Government takes decision as observed earlier within stipulated time limit, the interim relief granted by this Court in both these petitions shall continue with the clarification that if the petitioners fails to make application within stipulated time limit, as observed earlier, such interim relief shall automatically stands vacated.

13. Both these petitions are disposed of in terms of the aforesaid directions. No costs. Rule discharged by maintaining directions accordingly.

14. In view of the above, the Civil Application is also disposed of accordingly with no order as to costs.

(Jayant Patel, J.)

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